

# Department of the Interior

## Departmental Manual

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**Effective Date:** 09/29/95

**Series:** Public Lands

**Part 602:** Land Acquisition, Exchange and Disposal

**Chapter 2:** Real Property Pre-Acquisition Environmental Site Assessments

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**Originating Office:** Office of Environmental Policy and Compliance, Office of the Secretary

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### 602 DM 2

1. **Purpose.** This chapter prescribes Departmental policy, responsibilities, and functions regarding required determinations of the risk of exposing the Department to liability for hazardous substances or other environmental cleanup costs and damages associated with the acquisition of any real property by the Department for the United States. The responsibilities and functions prescribed in this chapter are intended to ensure that, prior to real property acquisition, each bureau determines the likelihood of the presence and extent of hazardous substance-related or other environmental liability associated with real property. Such determinations must be a consideration in any decision to acquire real property and to establish the total cost of the acquisition.

2. **Scope.** The responsibilities and requirements of this chapter shall apply to any Departmental or bureau proposed acquisition of real property to which liability can attach. In addition, this policy shall apply to withdrawn public domain lands returning to Departmental jurisdiction. All acquisitions of real property, whether discretionary or non-discretionary, will require a pre-acquisition environmental site assessment to be performed. This includes real property acquisitions between Departmental bureaus as well as other departments and agencies of the United States. The requirements of this chapter shall not apply to real property to which liability will not attach, as determined in consultation with the Office of the Solicitor.

3. **Authority.** The primary authorities for carrying out pre-acquisition environmental site assessments for the Department are as follows: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. ' 9601 et seq.; Community Environmental Response Facilitation Act, 42 U.S.C. ' 9621; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; Clean Water Act, as amended, 33 U.S.C. ' 1251 et seq.; Clean Air Act, as amended, 42 U.S.C. ' 7401 et seq; Oil Pollution Act, as amended, 33 U.S.C. ' 2701 et seq.; Toxic Substances Control Act, 42 U.S.C. ' 2601 et seq.; the Emergency Planning and Community Right-To-Know Act, "Comprehensive Waste Management", 518 DM 1; "Compliance with Waste Management Requirements," 518 DM 2; any other applicable Federal, State, and local requirements; and the American Society for Testing Materials (ASTM) - Standards on Environmental Site Assessments for Commercial Real Estate.

4. **Policy.** It is Departmental policy to minimize the potential liability of the Department and its bureaus by acquiring real property that is not contaminated unless directed by the Congress, court mandate, or as determined by the Secretary. Before any real property is acquired, the acquiring bureau shall:

A. Ascertain the nature and extent of any potential liability resulting from hazardous substances or other environmental problems associated with such property.

B. Weigh the benefits of the acquisition relative to the total cost, including: (1) fair market value, (2) remediation costs, and (3) any known or reasonably estimated monetary damages that could be associated with the acquisition.

C. Inform the appropriate Congressional committees of the total cost, as specified in 2.4B, for any Congressionally mandated acquisition of contaminated property.

5. **Definitions.** For purposes of this Chapter, the following definitions shall apply:

A. **Real Property.** Means any land or an interest therein, and all buildings, structures, and improvements affixed to the land acquired by the Department of the Interior or its bureaus, unless the affected bureau determines with concurrence of the Office of the Solicitor that no environmental liability will attach to such an interest.

B. **Real Property Acquisition.** Means real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States for any period of time, however short.

C. **Hazardous Substance and Release.** Means all CERCLA listed substances, petroleum products, nuclear source materials, and unexploded ordnance. A release shall mean any unauthorized discharge of a hazardous substance into the environment.

D. **Pre-Acquisition Environmental Site Assessment.** Means an environmental site assessment, prior to acquisition, to determine the potential of, and extent of liability for hazardous substances or other environmental remediation or injury. This includes but is not limited to a determination of the absence or presence of hazardous substances or conditions that indicate an existing or past release, or a material threat of a release on the real property, into the air, soil, sediment, groundwater, surface water, or any structures located on the real property.

E. **Remediation.** Means meeting the requirements and standards of applicable laws in a cleanup.

6. **Requirements, Functions, and Procedures.**

A. **Minimum Standards for Pre-Acquisition Environmental Site Assessments.** Bureaus may establish their own pre-acquisition environmental site assessment procedures to meet their individual needs. However, all bureau pre-acquisition environmental site assessment procedures shall adapt ASTM - Standards on Environmental Site Assessments for Commercial Real Estate in effect at that time. Bureaus are to ensure that the pre-acquisition environmental site assessment is complete in terms of technical accuracy and comprehensiveness.

B. **Qualifications of Personnel and Time Limit.** The pre-acquisition environmental site

assessment must be conducted or supervised by a qualified individual, as determined by the bureau. Pre-acquisition environmental site assessments will be considered adequate for a period not to exceed 12 months prior to the date of the acquisition of real property. Exceptions to this time limit will be considered for real property located in adverse climatic or geographical areas. All exceptions must be supported by documentation and approved by the Bureau Director.

**C. Acquisition.** Following the preparation of the pre-acquisition environmental site assessment, real property may be acquired, provided: (1) no evidence of hazardous substance or other environmental liability is found; (2) if there is such evidence, the acquisition will result in insignificant or no increased cost to the United States; (3) the pre-acquisition proposal, including any liability risk associated with the acquisition is determined to benefit the bureau and is approved in accordance with paragraph 2.6D; or (4) the acquisition is mandated by the Congress, courts, or by the Secretary. Whenever possible, the identification of the contributions to the management of the liability by potentially responsible parties or other liable entities should be included in the contract or other legally enforceable instrument.

**D. Approvals.** Approval is required for all real property acquisitions that: (1) may require hazardous substance or other environmental cleanup; or (2) that may result in liability risk, including remediation and other known and reasonably estimated costs associated with the acquisition. Where applicable, a formal estimate of the cost of alternatives should be included as part of the request for approval.

**E. Levels of Approvals.** The level of approval authority for remediation costs is as follows:

Assistant Secretary - Policy, Management and Budget	greater than \$500,000
Bureau Director	\$500,000 or less

Bureau Directors may further assign their approval authority to a level not to exceed \$250,000.

**F. Approval of Real Property Acquisition Proposals by the Assistant Secretary - Policy, Management and Budget (PMB).** All requests for approval by the Assistant Secretary - PMB, involving hazardous substances requiring remediation or other cleanup in excess of the limits specified in 2.6E, require concurrence by the Bureau Director and the respective programmatic Assistant Secretary. Such requests must provide detailed information on costs of acquisition and potential liability risks. The Office of the Solicitor or the Assistant Secretary - PMB may impose additional limitations on or requirements for acquisitions which are determined to be necessary for the protection of the Department from liability risks.

**G. Funding.** Performance of pre-acquisition environmental assessments will be accomplished through normal program appropriations. The acquiring bureau must ensure that adequate funds will be available for completion of cleanup or remediation of all acquired contaminated real property. Funding of pre-acquisition environmental site assessments and associated remediations will not be obtained from the Departmental Central HazMat Fund.

**H. Reprogramming.** Any reprogramming proposal should be submitted according to

established Departmental reprogramming procedures.

I. **Statutory Acquisitions.** To the maximum extent possible, Bureau Directors shall ensure that reports to Congress, comments on proposed legislation, and Congressional testimony on the acquisition of real property contain pre-acquisition environmental site assessment information and estimates of remediation and associated costs or liability risks.

J. **Record Retention.** Each bureau that acquires real property must maintain complete documentation of the process and findings of the pre-acquisition environmental site assessment. These records should be maintained as part of the acquisition case file and therefore retained for the same length of time.

## 7. **Responsibilities.**

A. **Office of the Solicitor.** The Office of the Solicitor is responsible for providing legal review and guidance for any bureau proposed real property acquisition.

B. **Assistant Secretaries.** All Assistant Secretaries are to oversee bureaus and offices under their jurisdiction to ensure compliance with this chapter. The respective Assistant Secretary must approve pre-acquisition environmental site assessments and related information sent to the Assistant Secretary - PMB for approval. All Assistant Secretaries are responsible for approval of remediation fund expenditures under their jurisdiction.

C. **Assistant Secretary - PMB.** The Assistant Secretary - PMB, through the Office of Environmental Policy and Compliance, is responsible for oversight of Departmental compliance with 602 DM 2.

D. **Office of Environmental Policy and Compliance.** The Office of Environmental Policy and Compliance is responsible for reviewing all pre-acquisition environmental site assessments and reports requiring approval by the Assistant Secretary - PMB.

E. **Bureau Directors.** Bureau Directors having responsibility for real property acquisition under their jurisdiction will develop guidance and instructions, and maintain records to implement 602 DM 2. Bureau Directors are to ensure that pre-acquisition environmental site assessments are performed and are to exercise due diligence in limiting any potential liability risks to the bureau or the Department. Bureau Directors are responsible for approval of remediation fund expenditures under their jurisdiction. In addition, within their scope of authority, Bureau Directors are to ensure adequate program support is provided in terms of resources and budget for fulfilling the requirements of this Chapter.

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